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Filing date: **12/13/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202894
Party	Defendant Midrange Performance Group
Correspondence Address	MIDRANGE PERFORMANCE GROUP MIDRANGE PERFORMANCE GROUP 100 ARAPAHOE AVE STE 14 BOULDER, CO 80302-5862  rwatson@mpginc.com
Submission	Answer
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Date	12/13/2011
Attachments	MPG Response to Notice of Opposition 2011-12-13.pdf ( 5 pages )(145091 bytes )

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Notice of Opposition: 91202894

Filing Date: **12/13/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## **Response to Notice of Opposition**

### **Applicant Information**

Applicant No.: 85259140 Publication date: 08/09/2011

Response Filing Date: 12/12/2011

Applicant: Midrange Performance Group  
100 Arapahoe, #14  
Boulder, CO 80302  
USA

### **Opposer Information**

Name: Power Analytics Corporation  
16870 West Bernardo Drive, Suite 330  
San Diego, CA 92127  
USA

Opposition No.: 91202894

Attorney Information: Barry F. Soalt  
Procopio Cory Hargreaves & Savitch LLP  
525 B Street, Suite 2200  
San Diego, CA 92101  
USA

### **Goods/Services Affected by Opposition**

Class 009. First Use 2011/03/01 First Use in Commerce 2011/03/03

Software for gathering and analyzing computer performance data

### **Applicant Response to Opposition**

Unlikelihood of confusion

Trademark Act section 2(d)

## Mark Cited by Opposer

U. S. Registration No. 3118508  
Registration Date: 07/18/2006

Application Date: 03/01/2005  
Foreign Priority Date: None

Word Mark: POWER ANALYTICS

Design Mark: POWER ANALYTICS

Description of Mark: None

Goods/Services: Class 009. First use: 2005/04/18 First Use in Commerce: 2005/04/18.

Computer software for real-time monitoring, analysis and predictive control of electrical power distribution system infrastructures for mission critical facilities, such as submarines and airports, to ensure uninterrupted operations of said infrastructures and the critical processes they support.

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date:

Signature:



Name: William Watson

Date: 12/13/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85/259,140

Published in the Official Gazette of August 9, 2011

Application for POWER ANALYTICS in class 9

Midrange Performance Group, a Colorado	)	
Corporation	)	
Applicant,	)	Opposition No. 91202894
	)	<b>RESPONSE TO NOTICE OF OPPOSITION</b>
Vs.	)	
	)	
Power Analytics Corporation, a Delaware	)	
Corporation	)	
Opposer	)	

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**VIA ELECTRONIC SYSTEM FOR  
TRADEMARK TRIALS AND APPEAL (ESTTA)**

**RESPONSE TO NOTICE OF OPPOSITION**

Midrange Performance Group ("Applicant"), a Colorado corporation, having a principal address of 100 Arapahoe, #14, Boulder, CO, 80302, hereby request the approval of concurrent registration for the mark "POWER ANALYTICS", application Serial No. 85259140.

The Applicant believes that there would be NO damages of concurrent registration of the mark "POWER ANALYTICS" due to the completely different marketplaces and functions.

As grounds of disagreement with opposition #91202894 Applicant asserts as follows:

1. The facts as stated in the Plaintiff's opposition statements 1 through 4 are true.

2. Opposer's registered trademark: "POWER ANALYTICS" is in NO way related, although identical, to Applicant's application for the same mark as stated in statement 5 of the opposition. Opposer's software is for "real-time monitoring, analysis and predictive control of electrical power distribution systems infrastructures". Applicant's software is for "gathering and analyzing computer performance data" specifically on IBM's Power Systems (hence the name) computers used in commercial environments. Applicant's use of the 'POWER ANALYTICS' mark is only as a set of functions within Applicant's Navigator Family of products: specifically, Performance Navigator and Power Navigator. Applicant's use of the mark 'POWER ANALYTICS' has nothing to do with 'electrical power distribution systems infrastructures'.

3. Opposer's goods and Applicant's goods travel in completely different marketing channels of trade. Applicant's customers are solely focused on the IBM commercial computer systems marketplace. There is virtually zero overlap with the marketing and classes of customers with the Opposer's. The only possible customer overlap would be a customer who needed or uses Opposer's software and also uses IBM solutions in their back-office commercial operation (invoicing customers, etc.).

4. Applicant believes that there would be zero confusion in the marketplace with that of the Opposer for the reasons stated above. As an additional proof of lack of confusion, a Google search for the mark 'POWER ANALYTICS' returned zero references to the Applicant, at least in the top 100, while 90% of the top 100 returned references to the Opposer.

5. For the foregoing reasons, the registration of 'POWER ANALYTICS' sought by Applicant is NOT contrary to Section 2 of the Lanham Act and would cause no damage to Opposer.

WHEREFORE, Applicant respectfully requests the Opposition be overruled and the registration of 'POWER ANALYTICS' Application No. 85259140 be approved.

Dated: December 13, 2011

Respectfully submitted,



William R. Watson

Midrange Performance Group

Midrange Performance Group

100 Arapahoe, #14

Boulder, CO 80302

303-939-9648

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing RESPONSE TO NOTICE OF OPPOSITION is being mailed on December 13, 2011, by First Class mail to Opposer as follows:

Power Analytics Corporation  
16870 West Bernardo Drive, Suite 330  
San Diego, CA 92127  
USA

And

Barry F. Soalt  
Procopio Cory Hargreaves & Savitch LLP  
525 B Street, Suite 2200  
San Diego, CA 92101  
USA

Dated: December 13, 2011

By: 

William R. Watson

Midrange Performance Group